IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

WP(C).No. 31659 of 2007(R)
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AGAINST THE ORDER IN IA. 1661 /2007 IN
OS.227/2006 of MUNSIFF COURT,VARKALA
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PETITIONER:
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ROY CHANDRAN,
MULLAVILA VEEDU, THACHAKKONAM, VARKALA VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.M.R.RAJESH
SMT.A.K.PREETHA

RESPONDENTS:
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1. RAMACHANDRAN, S/O.KESAVAN VAIDYAN,
KOOTTIL VEEDU, KEDAVATHUVILA,CHERUNNIYOOR VILLAGE,
THIRUVANANTHAPURAM DISTRICT, PIN-695 142.

2. LISSA CHANDRAN,
KOOTTIL VEEDU, KEDAVATHUVILA,CHERUNNIYOOR VILLAGE,
THIRUVANANTHAPURAM DISTRICT, PIN-695 142.

3. REENA CHANDRAN,
POIKAVILA VEEDU, KEDAVATHUVILA,CHERUNNIYOOR
VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN-695 142.

4. MAHESHKUMAR,
POIKAVILA VEEDU, KEDAVATHUVILA,CHERUNNIYOOR
VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN-695 142.

BY ADV. SRI.SUMAN CHAKRAVARTHY
SRI.J.JAYAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

# Appendix

Petitioner's Exts:

Ext.P1 the true copy of the plaint in OS 216/2005 of Sub Court, Attingal.

Ext.P2 A true copy of the written statement filed by the 1st respondent to Ext.P1.

Ext.P3 a true copy of the plaint in OS 227/2006 of Munsiff Court, Varkala.

Ext.P4 A true copy of the written statement filed by the petitioner and respondents 2 to 4 to Ext.P3.

Ext.P5 A true copy of the IA 1661/2007 in OS 227/06 of Munsiff Court, Varkala.

Ext.P6 A true copy of the objection filed by the 1st respondent to Ext.P5.

Ext.P7 A true copy of the order dt. 10.10.2007 dismissing Ext.P5.

**M.N.Krishnan, J.**

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**W.P(C).No.31659 of 2007**

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**Dated this the 12th day of November, 2007.**

**JUDGMENT**

This Writ Petition is filed seeking to challenge the order passed in I.A.No.1661 of 2007 in O.S.No.227 of 2006. It was an application filed for stay under Section 10 of C.P.C. of the suit, O.S.No.227 of 2006 on the ground that another suit, O.S.No.216 of 2005 is pending before the Subordinate Judge, Attingal. The court below found that one is a money suit and the other is a partition suit and therefore Section 10 of C.P.C. will not be attracted and refused to stay the case.

2. A reading of the facts of the case would reveal that the property belongs to one Lalitha, wife of first defendant and parents of the plaintiffs in O.S.No.216 of 2005 of the Subordinate Judge, Attingal. The suit in the Subordinate Judge, Attingal relates to claim of money on the ground that the father is not a legal heir of the mother and therefore, he is bound to reimburse the amount which he had taken. Meanwhile, the father has filed

a suit before the Munsiff's Court, Varkala for setting aside a document and also for partition. There also the issue involved is whether the father is entitled to succeed to the estate of the wife as a legal heir. So in order to resolve the controversy between the parties, the point to be decided in both the suits is whether the succession opens under Section 15 of the Hindu Succession Act or under 17 of the Hindu Succession Act. A finding on that point will determine the fate of both the suits. Though strictly Section 10 of C.P.C. cannot be made available, I feel that it is a fit case where a joint trial has to be ordered in these two cases.

3. Therefore, so much wastage of time can be avoided if the matter can be tried by a court which is having superior jurisdiction where the earlier suit filed is pending. Though I agree with the learned Munsiff in not granting a stay under Section 10 of C.P.C., I feel that interest of justice requires that the case pending before the Munsiff, Varkala as O.S.No.277 of 2006 be transferred to the Subordinate Judge, Attingal where O.S.No.216 of 2005 is pending and they be tried jointly, so that there can be a final decision on the matter.

4. Taking into consideration the bone of contention of the

materials involved I direct the Subordinate Judge, Attingal to dispose of the matter as expeditiously as possible, within a time frame of three months from today. The Registry shall send a copy of this order to the Munsiff, Varkala for transferring O.S.No.227 of 2006 to the Subordinate Judge, Attingal.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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